

Board of Selectmen  
March 03, 2014

PRESENT: Richard Nichols, Chairman  
Michael Pierce, Vice-Chairman  
Philip Bean, Selectman  
Mary-Louise Woolsey, Selectman  
Michael Plouffe, Selectman  
Frederick Welch, Town Manager  
Mark Gearreald, Town Attorney

SALUTE TO THE FLAG

I. Public Comment Period (3:52)

Arthur Moody, 3 Thomsen Road, spoke about the comment made by a candidate about there being 33 miles of Town road and he does not believe this to be accurate; candidates night and how it took until the last candidate to make the comment “what’s wrong with open space” which is the same thought he had; Fire Department vehicle becoming surplus and choice to not put it out to auction; he has a problem with not putting vehicle out to auction and went into details as to why; he would like to see them follow the ordinance. Chairman Nichols commented in response to 33 miles of roads and there in fact is 77 miles of Town maintained roads and it rises to about 100 when you consider all roads.

II. Announcements and Community Calendar (8:55)

Selectman Pierce announced that March 11<sup>th</sup> is approaching and encourages everyone to get out and vote; in this election their vote can be very serious and have repercussion for years to come and can change the path of this Board.

Selectman Bean commented on the Chamber Awards Night last Friday and it was a great event; great awards and winners.

Selectman Plouffe also reminded everyone to get out and vote on March 11<sup>th</sup>.

Selectman Woolsey commented on in light of what Selectman Pierce just said, is it change for the sake of change or change to do something beneficial, change is not always a magic word; the yellow sheet is out and there is an incorrect statement in regards to the money for lights at Eaton Field, this will not impact the taxpayers; explained there is money in the recreation fund; noticed someone at the candidates night that spoke about the wonderful amount of money the State has spent in Hampton benefits Hampton, the money spent at the beach benefits the State; the three Zoning articles are very detrimental to the Town if voted in; and please get out to vote.

Selectman Pierce added that if anyone has questions on Article 5 they can call him he may have a different view.

III. Appointments - None

IV. Town Manager's Report (12:40)

1. It is that time of the year that all dog lovers know well. Please license your dog prior to April 30, 2014.
2. Please remember to vote on Tuesday, March 11, 2014. If you are unable to come to the polls that day to cast your ballot please contact the Town Clerk's Office now for the requirements to obtain an absentee ballot.
3. For those residents who are or may be eligible for a veterans, elderly, blind or other type of tax exemption or credit please call the Town Assessor's Office now for information, forms and other required materials in order to apply.
4. Work continues at full speed on the completion of the Church Street Sewer Pumping Station.
5. We again request those who have not signed up for emergency notifications from the Town to do so. Forms are available on the counter at the Town Office or may be obtained on line.

Mr. Welch has given a few things to the Chairman that came up after the agenda was posted. There was a proposal from the Air National Guard looking for a letter from the Town in regards to a hearing they are holding later this week.

Selectman Woolsey MOTIONED to ask the Manager to draft a letter of support on behalf of the Board of Selectmen SECONDED by Selectman Pierce.

VOTE: 5-0-0

Chairman Nichols spoke about the discussion during budget preparation on reevaluating and possibly changing some of the fees for the Building Department that occurred during budget preparation; possibility of putting new fees in place January 1<sup>st</sup>; wonders where we are at with this. Mr. Welch responded that he had talked to Mr. Schultz today; Mr. Schultz has finished his compilation of the end of year and showed a slight profit of \$1,800; Mr. Schultz does not feel there is a need at this time to increase fees. Mr. Welch has asked Mr. Schultz to go back and review and take out the average for the last 5 years; to get a cost of equipment replacement such as pick-up trucks; total cost over a period of time. Once done Mr. Welch will provide it to the Board so they can have a full picture of what is going on.

V. Old Business (16:35)

1. Question of retiring the Heritage Commission (16:37)

Chairman Nichols provided the following background information on this subject, a few months back the Chairman resigned from the Commission and recommended that the Board discontinue the Commission, as there is very few responsibilities left of the Commission.

Mr. Welch sent out a letter to the remaining commission members for their input on that suggestion. Mr. Welch shared the following in regards to members of the Commission's feedback: the members who responded to the letter all agreed it is time to discontinue the

Commission. Mr. Welch spoke with Roger Syphers in person. Mr. Syphers' concern is if the Commission is discontinued, who will be responsible for watching and maintaining the four buildings that they supervise. Mr. Welch describe the four buildings in detail; thinks this is a good question; if Board decides to discontinue the commission at Town meeting, we will need to know who is going to watch over these buildings.

Chairman Nichols commented that there is really nothing to do at this time if a Town meeting vote is required.

Selectman Bean stated that he has been the Selectmen's rep for a couple of years; it seems to be dying for lack of interest; happy to go along with the retirement.

Selectman Pierce spoke about how the owner of Cinnamon Rainbows originally wanted to put his business there at his Fish House, that it was kyboshed, but there are surfboards all over the place; someone is going to have to keep a watch on this area. Mr. Welch will have to look at this, there was something voted on at Town Meeting in regards to the Fish houses. He will get back to the Board once he has the information.

Selectman Woolsey MOTIONED to include on the list of warrant articles for next year an article to discontinue the Heritage Commission SECONDED by Selectman Pierce.

Selectman Peirce wonders that if these areas need to be watched, can they delegate it to some other commission/committee to watch over. Mr. Welch thinks that they will have to look at these needs and take them into consideration when putting together an article.

VOTE: 5-0-0

## 2. Abatement request, Sustainable Ales, LLC., Land Use Change Tax (22:39)

Mr. Tinker explained that he has presented the Board with the response language for the abatement of the land use change tax penalty for Sustainable Ales, at 105 Towle Farm Road; will answer any questions; this is submitted for Boards approval.

Chairman Nichols suggested that Mr. Tinker provide a little background on what is Land Use Change Tax.

Mr. Tinker explained that the property prior to getting approvals to develop the brewery site consisted of 14 acres; 1 acre was always out of use, which was the original farmhouse; was to become a 4 acre developed area. The process of land use change tax was to take the 3 acres in current use, and remove them and we would assign a fair market value to them relative to the date of change; the date of change is when change happens on the land area. There are some things in the RSA that allows you, in a larger development to wait for substantial completion or the pulling of the majority of permits. This was the case with this property; we waited approximately 2 years to determine the fair market value for those 3 acres. That resulted in the land use change tax and the value was approximately \$1.3M; a little over \$440,000 per acre; 10% is what the penalty would be, therefore the land use change tax penalty was approximately \$132,000. Chairman Nichols pointed out the 10% is a matter of State statute.

Atty. Gearreald explained the current use is the category of taxation that when property is in an open space type arrangement it is taxed at a much lower value; provided that you have 10 acres; if you end up developing what is in current use it comes out of current use and that is what Mr. Tinker is trying to calculate.

Chairman Nichols asked about what Atty. Gearreald said about the much lower value, that it is almost no tax. Mr. Tinker explained that it could be under a \$100 per acre of land for a wooded area.

Selectman Woolsey MOTIONED to move to deny the abatement petition for the reasons set forth in the Assessor's report SECONDED by Chairman Nichols.

Chairman Nichols spoke about the February 27<sup>th</sup> memo from Mr. Tinker to the Board, that discusses this, asked if this document could become a public document following the Boards vote tonight; Atty. Gearreald stated it could be; he asked if this should be included in the motion and Atty. Gearreald stated it could be included in motion.

Motion AMENDED by Selectman Woolsey to include the memo dated February 27<sup>th</sup> from Mr. Tinker as a public document SECONDED by Chairman Nichols.

Selectman Pierce pointed out that it is not so much as a penalty of 10%, but is more related to the fact that you had a lower tax rate for a period of time on the land and now the land must be assessed at fair market value.

Selectman Woolsey pointed out that Current Use is also an encouragement for open space and environmental uses.

Atty. Gearreald explained how the Planning Board approved this development, had it been fully built as approved it would have taken all the acreage out of current use because it would reduce the current use acreage below 10 acres; and talked about the further qualification.

Selectman Bean confirmed with Atty. Gearreald and Mr. Welch that they concur with Assessor's recommendation, and he does as well.

Chairman Nichols suspects that this portion of land was in current use long before Smuttynose acquired the property, and thinks this is another benefit to have Smuttynose in Town with a value of \$1.3M compared to a couple of hundred dollars before.

VOTE: 5-0-0

### 3. Intergovernmental Agreement for Cable Access with SAU 90 (31:16)

Atty. Gearreald explained that for quite some time the Board has been dealing with the request from SAU 90 asking Town to allocate a portion of franchise fees received from Comcast, to be placed in a revolving fund for the Hampton School District. The Board voted back in November to allocate approximately \$13,000 to the school district from the fund for equipment. The equipment would be used by the district for programming on the second channel that the Town is entitled to under its franchise agreement with Comcast. SAU 90 had requested a more firm commitment to share revenues; the legal question arose as to whether one taxing unit of government could support another taxing unit of government legally. The mechanism to test this is the intergovernmental agreement that will go to the Attorney General's Office for approval. Explained the nuts and bolts of the agreement in detail including the Selectmen having the right to decide the amount, and if money is used for equipment it would be the property of Town, the school district would appoint a member to the Cable Committee; this has gone through a number of drafts, this one before them tonight satisfies this Boards request.

Chairman Nichols asked if it has been approved by the School Board and it was stated that it has not, it will go before them at their next meeting later this week. Atty. Gearreald pointed out that this final form has come to him from the school district.

Chairman Nichols MOTIONED approve the document to enter into the Inter-municipal Agreement for Cable Access, Facilities, and Equipment Between The Town of Hampton and the Hampton School District (SAU 90) and to submit the same, once it is signed by both parties, to the New Hampshire Attorney General's Office for approval under RSA 53-A:3, V SECONDED by Selectman Pierce.

VOTE: 5-0-0

Chairman Nichols brought up the road race a week ago Sunday and stated that he had one complaint, and Selectman Woolsey also had one complaint, total of 3 complaints; these complaints occurred at the same intersection Little River Road and Woodland Road. He talked to the Police Chief to get an understanding of what went on; there were not problems all over Town. The second ½ marathon approved the same night is coming up in October; this marathon has potential for greater inconvenience with 5500 runners. The race this past weekend was not well advertised or notified, nothing on website, no large mailings, no notice out on email notification. He thinks communication can be key, need to get the races information out on non-emergency notification, larger mailing, and use of message signs, make an effort of 10, on the communication piece.

Selectman Woolsey added to the discussion that there is no question in anyone's mind that the Law Enforcement Officer should have sole control over what happens at any intersection; tired of the inconvenience to the public; traffic cannot be stopped for long periods of time.

Selectman Pierce had a few questions for Mr. Tinker that a taxpayer brought to his attention that when they were looking at the rebates for the sewer, it appears not to include the long-term debt. Mr. Tinker confirmed this to be correct and it goes back to a Selectmen vote taken back in 79 or 81, he has the minutes in office from the meeting, if anyone wants to see them. Selectman Pierce also mentioned that the same taxpayer moved and wonders why the veteran's exemption stayed with the house. Mr. Tinker stated that it does stay with the property but only for that tax year.

Selectman Woolsey asked about the timing for the elderly exemptions. Mr. Tinker explained that it requires a lot more financial information and if they file a tax return then they have to review that return; requires year-end statements; asset information. The department does have 7 or 8 exemptions that appear to be complete; and elderly exemption will start showing up this month.

Chairman Nichols asked when the elderly exemptions have to be filed by and Mr. Tinker stated April 15<sup>th</sup>. There was a further discussion on the application process that they must be re-qualified at least every 5 years, and that is the typical timeframe. Individuals are notified by the Town.

## VI. New Business (45:27)

### 1. Approval Lease/rental document for Seawalls, Revetments, and or Stairs (45:30)

Atty. Gearreald explained that there are a number of properties in Town where people have encroached on property of the Town in several different ways; especially in the North Beach

area. Where it was leased land before and Town has sold all these lots; each deed specifically states that the land between the beach area, is not being sold as part of that; it is reserved to the Town. What you have is a situation of Town property that in many instances is being used for seawalls, revetments, and or stairways. In each case, you have people using Town property and not paying for it.

Atty. Gearreald explained the lease document and what it is intended to accomplish: it constitutes a permission on the part of the Selectmen to allow the occupancy of Town property that is not needed for public purposes; to confine the occupancy to the areas they approve, and charge a reasonable rent for that. The lease is to have a 5-year rental period for a cost of \$500, paid all at once. We are talking about 63 properties; when entering into the lease they are required to insure the land and to hold harmless the Town, in regards to any property damage or personal injury; and also to insure the property at those rates of coverage the Town requires of people who do work on Town property. Explained the taxation that will occur in regards to the leased property owned by the Town. Talked about a number of applications that will be coming up very soon and this document is needed for that framework.

Mr. Welch commented that the statute requires that we do this if people are going to maintain Town property and went through in detail on when and how the law came about.

Selectman Woolsey asked if the concrete wall is the property line and Atty. Gearreald believes this to be true if you were to look at the deed recorded at the Registry. Chairman Nichols thinks that we do not know this for sure until the Assessor goes out and measures. Selectman Woolsey asked if the Town will own some of the revetments and Atty. Gearreald said no, that is why they have this lease.

Selectman Pierce questioned if there is a concrete wall along this whole area and Chairman Nichols went into details on seawalls starting at Brown's Beach. Chairman Nichols also pointed out that the Assessor will have to go out and do a list & measure of the seawalls to determine the amount of encroachment onto Town land.

Selectman Woolsey commented on the pictures that come before the Planning Board when these plans are brought forward.

Mr. Welch spoke about the 2007 storm and how we lost a portion of the seawall and how the group in this area got together to make these repairs. This is a common practice for groups to get together and make repairs in certain areas.

Selectman Plouffe spoke on how the problem came about when Town decided to sell these leased lots; it created a private wall on Town land; this is where we are today; feet and inch measurement from the Blvd.

Mr. Welch commented that because of the wetlands ordinance these people have to come in with a plan and show where the property lines are.

Selectman Pierce commented that it appears that the seawalls in this area have been replaced at different times and it was confirmed this was the case.

Chairman Nichols stated that we are going to address all properties not just the ones coming in for wetland permits; we are doing this to protect the Town not as some sort of a revenue generator; the rent charged is essentially \$100 a year for 5 years; rent will be same for all; has

to be done in a timely manner since looking to protect ourselves from a liability standard. The combination of 3 documents; lease, application, and Selectmen regulations they approved. On the application thinks dates that work can be done should be added; need to get a letter out to all the properties so they know what they have to do; does not want to make this too tough on people; for walls that are there already then, should not need an engineering plan. He confirmed with Mr. Welch that in the Selectmen's regulations that the lease serves as the written consent; and where all the walls do not line up nicely and assumes that the requirement to line up, is not going to be enforced for seawalls that are there presently. Mr. Welch stated that this would only be done if coming in with special permit to redo the walls. Mr. Welch stated that we currently have 16 applications to rebuild the seawalls.

Selectman Woolsey asked about the conversation that they had in regards to railings, and language regarding railing, is it in the regulations.

Atty. Gearreald commented that there is no such case of "grandfathering", in the occupancy of Town property.

Chairman Nichols asked who will be doing yearly inspections and Mr. Welch stated it would be a combination of Building, Conservation, and Public Works.

Chairman Nichols commented that they currently have 33 lots down at the beach that do not have inspections of those, wonders what is causing them to feel that an annual inspection is needed, since we are just adding to the workload of those departments. Mr. Welch stated it is because the walls can shift and become dangerous.

There was a discussion on the railings and it is included in the Selectmen's regulations, and it is binding on the lease.

There was a consensus with the Board on this first draft. Chairman Nichols thinks we need to get this done prior to the summer. He also thinks that we may come up with some other areas where there are seawalls.

## 2. Supplemental Real Estate Tax Warrant, Pam Am Railways \$5,624.83 (1:11:06)

Mr. Tinker commented that this property is the former railway and went through the exact area and the RSA law that allows the Town to tax this area.

Chairman Nichols MOTIONED to approve the 2014-02 Supplemental Real Estate Property Tax Warrant in the amount of \$5,624.83 related to Pan Am Railways listed as map 999 lot 20 SECONDED by Selectman Woolsey.

VOTE: 5-0-0

Chairman Nichols brought up: memo they received from Jones & Beach in regards to a naming of a road down in the Dalton Woods subdivision; when talked about the naming last week Mr. Welch had confirmed that the names complied with the Boards decision to go back to King Philips War; plans to put this on the agenda next week.

## VII. Consent Agenda (1:12:53)

1. Veteran's Exemptions: Drigian, 4 Hampton Meadows, Map/Lot 172/6/4; Delisle, 933 Ocean Boulevard # 8, 151/9/8; O'Keefe, 404 Winnacunnet Road, 208/34; Draper, 66 Hobbs Road, 146/53; Higgins, 27 Leavitt Road, 178/70; Drinkwater, 8 Palmer Street,

57/14' Doyle, 61 Schooner Landing, 90/32/161; Dezarn, 32 Walnut Avenue, 223/5; Dobbins, 27 Bonair Avenue, 222/33/W; Straw, 27 Dumas Avenue, 267/3; Hayden, 8 Portsmouth Avenue, 303/1; Inglis, 5 Huckleberry Lane, 98/6; Edgcomb, 409 High Street, 116/15; McDermott, 947 Ocean Boulevard #17, 151/4/17; Emerick, 207 North Shore Road, 116/54; Duffin, 13 Glen Road, 150/45; Deneve, 204 North Shore Road, 134/6; Dube, 29 Towle Avenue, 161/39; Drake, 63 Hampton Meadows, 172/6/63; Parsons, 105 Winnacunnet Road #9, 176/19/9.

2. Personnel Policy amendment all personnel actions to be first filed with the human Resources Manager; non-budgeted expenditures to Selectmen for review and approval; Non-Union annual wages increases to be effective April 1<sup>st</sup> unless otherwise voted by the Board of Selectmen; Employees not entitled to health insurance can purchase at 100% of their cost.

Chairman Nichols MOTIONED to MOVE the Consent Agenda SECONDED by Selectman Pierce.

VOTE: 5-0-0

#### VIII. Closing Comments – None

#### IX. Adjournment of Public Meeting (1:14:02)

A motion was made by Chairman Nichols to go into a non-public session under RSA 91-A:3,II, (c), this motion was seconded by Selectman Woolsey. A roll call vote was taken, and all five Selectmen were in favor.

Chairman Nichols MOTIONED to adjourn at 8:18 PM SECONDED by Selectman Pierce.

VOTE: 5-0-0

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Chairman